

be addressed to the Executive Secretary of the Commission at One Lafayette Centre, 1120 20th Street, NW., Suite 980, Washington, DC 20036-3457.

[70 FR 22790, May 3, 2005]

§ 2200.107 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules and for good cause shown, the Commission or Judge may, upon application by any party or intervenor or on their own motion, after 3 working days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

[57 FR 41688, Sept. 11, 1992]

§ 2200.108 Official Seal of the Occupational Safety and Health Review Commission.

The seal of the Commission shall consist of: A gold eagle outspread, head facing dexter, a shield with 13 vertical stripes superimposed on its breast, holding an olive branch in its claws, the whole superimposed over a plain solid white Greek cross with a green background, encircled by a white band edged in black and inscribed "Occupational Safety and Health Review Commission" in black letters.

[51 FR 32015, Sept. 8, 1986; 52 FR 13832, Apr. 27, 1987]

Subpart H—Settlement Part

SOURCE: 64 FR 8246, Feb. 19, 1999, unless otherwise noted.

§ 2200.120 Settlement procedure.

(a) *Voluntary Settlement*—(1) *Applicability and duration.* (i) This section applies only to notices of contests by employers, and to applications for fees under the Equal Access to Justice Act and 29 CFR Part 2204.

(ii) Upon motion of any party after the docketing of the notice of contest, or otherwise with the consent of the parties at any time in the proceedings, the Chief Administrative Law Judge may assign a case to a Settlement Judge for proceedings under this section. In the event either the Secretary or the employer objects to the use of a

Settlement Judge procedure, such procedure shall not be imposed.

(2) *Length of voluntary settlement procedures.* The settlement procedures under this section shall be for a period not to exceed 45 days.

(b) *Mandatory settlement*—(1) *Applicability.* This section applies only to notices of contest by employers in which the aggregate amount of the penalties sought by the Secretary is \$100,000 or greater.

(2) *Proceedings under this part.* (i) *Assignment of case and appointment of Settlement Judge.* Notwithstanding any other provisions of these rules, upon the docketing of the notice of contest the Chief Administrative Law Judge shall assign to the Settlement Part any case which satisfies the criteria set forth in paragraph (b)(1) of this section. The Chief Administrative Law Judge shall appoint a Settlement Judge, who shall be a Judge other than the one assigned to hear and decide the case, except as provided in paragraph (f)(2) of this section.

(ii) *Discovery proceedings to be followed by settlement proceedings.* The Settlement Judge shall issue a discovery scheduling order and supervise all discovery proceedings. At the conclusion of discovery the Settlement Judge will conduct settlement proceedings during a period not to exceed 60 days. If, at the conclusion of the settlement proceedings the case has not been settled the Settlement Judge shall promptly notify the Chief Administrative Law Judge in accordance with paragraph (f) of this section.

(c) *Powers and duties of Settlement Judges.* (1) The Judge shall confer with the parties on subjects and issues of whole or partial settlement of the case and seek resolution of as many of the issues as is feasible.

(2) The Judge may require the parties to provide statements of the issues in controversy and the factual predicate for each party's position on each issue and may enter other orders as appropriate to facilitate the proceedings.

(3) In voluntary settlement proceedings the Judge may allow or suspend discovery during the settlement proceedings.

(4) The Judge may suggest privately to each attorney or other representative of a party what concessions his or her client should consider and assess privately with each attorney or other representative the reasonableness of the party's case or settlement position.

(5) The Judge may, with the consent of the parties, conduct such other settlement proceedings as may aid in the settlement of the case.

(d) *Settlement conference*—(1) *General*. The Settlement Judge shall convene and preside over conferences between the parties. Settlement conferences may be conducted telephonically or in person. The Judge shall designate a place and time of conference.

(2) *Participation in conference*. The Settlement Judge may require that any attorney or other representative who is expected to try the case for each party be present. The Settlement Judge may also require that the party's representative be accompanied by an official of the party having full settlement authority on behalf of the party. The parties and their representatives or attorneys are expected to be completely candid with the Settlement Judge so that he may properly guide settlement discussions. The failure to be present at a settlement conference or otherwise to comply with the orders of the Settlement Judge or the refusal to cooperate fully within the spirit of this rule may result in the imposition of sanctions under § 2200.101.

(3) *Confidentiality of settlement proceedings*. All statements made and all information presented during the course of settlement proceedings under this section shall be regarded as confidential and shall not be divulged outside of these proceedings except with the consent of the parties. The Settlement Judge shall issue appropriate orders to protect confidentiality of settlement proceedings. The Settlement Judge shall not divulge any statements or information presented during private negotiations with a party or his representative during settlement proceedings except with the consent of that party. No evidence of statements or conduct in settlement proceedings under this section within the scope of Federal Rule of Evidence 408, no notes or other material prepared by or main-

tained by the Settlement Judge in connection with settlement proceedings, and no communications between the Settlement Judge and the Chief Administrative Law Judge in connection with settlement proceedings including the report of the Settlement Judge under paragraph (f) of this section, will be admissible in any subsequent hearing except by stipulation of the parties. Documents disclosed in the settlement proceeding may not be used in litigation unless obtained through appropriate discovery or subpoena. With respect to the Settlement Judge's participation in settlement proceedings, the Settlement Judge shall not discuss the merits of the case with any other person, nor appear as a witness in any hearing of the case.

(e) *Record of settlement proceedings*. No material of any form required to be held confidential under paragraph (d)(3) of this section shall be considered part of the official case record required to be maintained under 29 U.S.C. 661(g), nor shall any such material be open to public inspection as required by section 661(g), unless the parties otherwise stipulate. With the exception of an order approving the terms of any partial settlement agreed to between the parties as set forth in paragraph (f)(1) of this section, the Settlement Judge shall not file or cause to be filed in the official case record any material in his possession relating to these settlement proceedings, including but not limited to communications with the Chief Administrative Law Judge and his report under paragraph (f) of this section, unless the parties otherwise stipulate.

(f) *Report of Settlement Judge*. (1) The Settlement Judge shall promptly notify the Chief Administrative Law Judge in writing of the status of the case at the conclusion of the settlement period or such time that he determines further negotiations would be fruitless. If the Settlement Judge has made such a determination and a settlement agreement is not achieved within 45 days for voluntary settlement proceedings or 60 days for mandatory settlement proceedings, the Settlement Judge shall then advise the Chief Administrative Law Judge in writing. The Chief Administrative Law Judge may then in his discretion allow

an additional period of time, not to exceed 30 days, for further proceedings under this section. If at the expiration of the period allotted under this paragraph the Settlement Judge has not approved a full settlement, he shall furnish to the Chief Administrative Law Judge copies of any written stipulations and orders embodying the terms of any partial settlement the parties have reached.

(2) At the termination of the settlement period without a full settlement, the Chief Administrative Law Judge shall promptly assign the case to an Administrative Law Judge other than the Settlement Judge or Chief Administrative Law Judge for appropriate action on the remaining issues. If all the parties, the Settlement Judge and the Chief Administrative Law Judge agree, the Settlement Judge may be retained as the Hearing Judge.

(g) *Non-reviewability.* Notwithstanding the provisions of § 2200.73 regarding interlocutory review, any decision concerning the assignment of any Judge and any decision by the Settlement Judge to terminate settlement proceedings under this section is not subject to review, appeal, or rehearing.

[70 FR 22791, May 3, 2005; 70 FR 25652, May 13, 2005]

Subparts I–L [Reserved]

Subpart M—Simplified Proceedings

SOURCE: 60 FR 41809, Aug. 14, 1995, unless otherwise noted.

§ 2200.200 Purpose.

(a) The purpose of the Simplified Proceedings subpart is to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so that parties before the Commission may reduce the time and expense of litigation while being assured due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554. These procedural rules will be applied to accomplish this purpose.

(b) Procedures under this subpart are simplified in a number of ways. The major differences between these proce-

dures and those provided in subparts A through G of the Commission's rules of procedure are as follows.

(1) Complaints and answers are not required.

(2) Pleadings generally are not required. Early discussions among the parties and the Administrative Law Judge are required to narrow and define the disputes between the parties.

(3) The Secretary is required to provide the employer with certain informational documents early in the proceeding.

(4) Discovery is not permitted except as ordered by the Administrative Law Judge.

(5) Interlocutory appeals are not permitted.

(6) Hearings are less formal. The Federal Rules of Evidence do not apply. Instead of briefs, the parties will argue their case orally before the Judge at the conclusion of the hearing. In many instances, the Judge will render his or her decision from the bench.

[60 FR 41809, Aug. 14, 1995, as amended at 70 FR 22792, May 3, 2005]

§ 2200.201 Application.

The rules in this subpart will govern proceedings before a Judge in a case chosen for Simplified Proceedings under § 2200.203.

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 14822, Mar. 28, 1997; 62 FR 40934, July 31, 1997; 70 FR 22792, May 3, 2005]

§ 2200.202 Eligibility for Simplified Proceedings.

(a) Those cases selected for Simplified Proceedings will be those that do not involve complex issues of law or fact. Cases appropriate for Simplified Proceedings would generally include those with one or more of the following characteristics:

- (1) Relatively few citation items,
- (2) An aggregate proposed penalty of not more than \$20,000,
- (3) No allegation of willfulness or a repeat violation,
- (4) Not involving a fatality,
- (5) A hearing that is expected to take less than two days, or
- (6) A small employer whether appearing pro se or represented by counsel.

(b) Those cases with an aggregate proposed penalty of more than \$20,000,